

CHAPTER 18

FINANCIAL MANAGEMENT OF OIL OVERCHARGE MONEYS

1. **PURPOSE.** To establish policy, objectives, procedures, and responsibilities for the financial management of oil overcharge moneys. This chapter covers moneys received pursuant to consent orders, remedial orders, remedial orders for immediate compliance, orders of disallowance issued by DOE, consent decrees, and decisions of the courts.
2. **APPLICABILITY.** This chapter applies to all Departmental elements and activities that are directly or indirectly involved in the management of oil overcharge moneys.
3. **REFERENCES.**
 - a. **The Department of Energy-Department of the Treasury (Treasury) Agreement on Establishment of a Deposit Fund Escrow Account for Payments in Regard to Possible or Actual Violations of Law Enforced by the Department of Energy**, of 4-7-80, establishes a Department of the Treasury (Treasury) account for the deposit of moneys collected by DOE and procedures for investment in U.S. Government securities.
 - b. **In re The Department of Energy Stripper Well Exemption Litigation**, M.D.L. No. 378 (D. Kan., July 7, 1986), resulted in a settlement agreement of litigation over alleged violations of regulations governing the pricing of crude oil.
 - c. **The Modified Restitutionary Policy Statement**, of 8-4-86, implemented special refund proceedings under title 10, part 205, of the Code of Federal Regulations (10 CFR 205), subpart V, in crude oil cases.
 - d. **Statutes.**
 - (1) The Economic Stabilization Act of 1970, as amended (title 12, part 1904, of the United States Code (12 U.S.C. 1904), section 209), provides for restitution of moneys received in violation of DOE's price and allocation regulations.
 - (2) The Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 751 et seq. (1976)) includes the following provisions:
 - (a) Section 5(a)(1) incorporates section 209 of the Economic Stabilization Act, which concerns injunctions and other relief for violations, such as paragraph 4d(2)(a) restitution of overcharges by violators of oil price regulations.
 - (b) Section 4(a) provides the authority to promulgate regulations for the mandatory allocation and pricing of crude oil, residual fuel oil, and refined petroleum products in the United States.
 - (c) Section 4(b) states the objectives of the Mandatory Petroleum Allocation and Price Regulations, including equitable distribution of crude oil and refined petroleum products at equitable prices among all users and the maintenance of residential heating.

- (3) The Department of Energy Organization Act of 1977 (42 U.S.C. 7193, section 503), provides that the Department can issue a remedial order to a violator of any regulation, rule, or order promulgated pursuant to the Emergency Petroleum Allocation Act.
- (4) The Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), contained in title III of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99-509), establishes procedures for the disbursement of oil overcharge funds collected by the Department.
- (5) The Resolution Trust Corporation Completion Act (Public Law 103-204), section 38(a)(3), provides that funds deposited by an insured depository institution pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy shall be separately insured in an amount not to exceed \$100,000 for each insured depository institution depositing such funds.

e. Regulations.

- (1) Mandatory Petroleum Allocation and Price Regulations (10 CFR 210, 211, and 212) provide rules for pricing and allocating crude oil, residual fuel oil, and refined petroleum products produced in or imported into the United States.
- (2) 10 CFR 205 provides for the issuance of enforcement documents and remedies for oil overcharges.

4. BACKGROUND.

- a. General Counsel Authority.** The General Counsel (GC-1) has the authority to commence enforcement actions against persons who were subject to the Mandatory Petroleum Allocation and Price Regulations and to enter into consent orders, pursuant to 10 CFR 205.199J, in settlement of alleged violations.
- b. Office of Hearings and Appeals Authority.** The Office of Hearings and Appeals (HG-1) has the authority to:
 - (1) Issue final remedial orders, remedial orders for immediate compliance, and orders of disallowance described in 10 CFR 205.199B to require violators to take any of the remedies listed in 10 CFR 205.199I, or such other action that DOE determines necessary to eliminate or compensate for the effects of a violation.
 - (2) Implement special refund procedures pursuant to 10 CFR 205.280 et. seq. (subpart V) to refund moneys to injured persons who are not readily identifiable and are entitled to refunds for oil overcharges and other violations of the Mandatory Petroleum Allocation and Price Regulations.
- c. Deposit Fund Escrow Account.** In accordance with 31 U.S.C. 3513, DOE has established a deposit fund escrow account with investment authority, 89X6425, Payments by Alleged Violators of Department of Energy Regulations, with Treasury.

5. POLICY.

- a. The Department of Energy shall use the escrow account to deposit all or any part of moneys received from persons who have violated or allegedly violated DOE regulations.
- b. The Chief Financial Officer (CFO) shall invest funds in the escrow account in U.S. Government securities or deposit them with financial institutions for investment in certificates of deposit with minority financial institutions under the Department's Bank Deposit Financial Assistance Program.
- c. The CFO shall ensure that moneys deposited in financial institutions are either completely insured by the Federal Deposit Insurance Corporation or invested at all times by the financial institutions in investments backed by the full faith and credit of the United States. All amounts in excess of the insurance limits must be secured by collateral pledged with a Federal Reserve bank in accordance with 31 CFR 202 and the Treasury Financial Manual (I TFM 6-9000).
- d. The CFO shall disburse or transfer moneys deposited in the escrow account or subsequently invested only under one of the following conditions:
 - (1) Pursuant to an order issued by HG-1;
 - (2) As authorized by statutory requirements that may be enacted;
 - (3) To make a refund to a violator or alleged violator based on erroneous overpayment to the account; or
 - (4) Pursuant to a determination issued by GC-1 to transfer funds to the Miscellaneous Receipts account within Treasury.
- e. The funds in special refund proceedings involving crude oil cases shall be distributed as follows: Up to 20 percent will be reserved for the payment of claims of eligible parties, and the balance will be divided between the states, territories, and possessions of the United States and Treasury as indirect restitution to unidentified injured parties.
- f. The moneys shall not be used to pay or reimburse Department administrative expenses, except to the extent expressly authorized by law.

6. RESPONSIBILITIES.

- a. **The Director of the Office of Hearings and Appeals (HG-1) or a designee shall:**
 - (1) Issue orders specifying the distribution of funds from the escrow account.
 - (2) Annually determine the amounts that are excess in the escrow account.
 - (3) Designate and provide to the CFO the names and signatures of approving officials to authorize requests for disbursement of moneys from the escrow account.

- (4) Verify injured persons' addresses, notify them of the forthcoming payments, and request their tax identification numbers before requesting disbursement from the escrow account.
- (5) Provide projections of future disbursements from the escrow account as required by the CFO to facilitate the development and updating of an investment plan for the escrow account.

b. The General Counsel (GC-1) or designee shall:

- (1) Provide a copy of each order to the CFO when moneys are due from oil entities, indicating the schedule of payment and interest assessment, if applicable.
- (2) Designate and provide to the CFO the name and signature of an approving official to authorize requests for transfers of moneys from the escrow account to the Miscellaneous Receipts account of Treasury.
- (3) Issue determinations to make transfers to the Miscellaneous Receipts account of Treasury.
- (4) Determine the amount of funds to be held in reserve for the payment of liabilities that the Department may incur as a result of litigation.
- (5) Provide projections of deposits resulting from future settlements with alleged violators of the Department's price and allocations regulations as required by the CFO.

c. The CFO shall:

- (1) Be responsible for the overall financial management of moneys in the accounts that are the subject of this Order.
- (2) Be responsible for establishing, collecting, and closing receivables for moneys due from violators of DOE regulations or due from individuals who have received erroneous payments.
- (3) Disburse funds, including interest earned, in accordance with directives or determinations issued by the responsible official for any particular disbursement effort pursuant to paragraphs 6a(1) and 6b(3).
- (4) Provide monthly reports on the status of subsidiary accounts.
- (5) Ensure compliance with the terms and conditions of the agreement between Treasury and DOE and request changes to the agreement as may be required.
- (6) Make deposits into the escrow account for investments.
- (7) Utilizing projections of future deposits to and disbursements from the escrow account provided by GC-1 and HG-1, identify available funds and invest them in either U.S. Government securities or certificates of deposit with minority financial

institutions participating in the Department's Bank Deposit Financial Assistance Program.

- (8) Manage financial activities associated with the Department's Bank Deposit Financial Assistance Program.
- (9) Obtain legal concurrence from the GC regarding compromise, suspension, and termination actions on receivables of more than \$100,000 that are due from violators of DOE regulations and, as appropriate, legal advice on amounts due from individuals who have received erroneous payments and court orders or interpretation of legislative actions that may affect disbursement of funds from the deposit fund escrow account.

7. GENERAL PROCEDURES.

- a. **Accounting Controls.** The financial management of the moneys received by the CFO shall include a subsidiary account for each remedial order, order of disallowance, consent order, or decision and order (referred to collectively below as "order"). Each account must list the receipts, interest earned, and disbursements (including attributable interest) against each order. GC-1 shall provide a copy of the order to the CFO when moneys due from oil entities are established. The CFO shall record and maintain receivables for moneys due from violators or alleged violators. The CFO shall pool the total moneys collected and deposited to the account for investment purposes without regard to the amounts applicable to individual orders in accordance with the agreement between Treasury and DOE.
- b. **Special Provisions.** PODRA establishes certain procedures for the disbursement of oil overcharge funds collected by DOE pursuant to the Emergency Petroleum Allocation Act of 1973 and the Economic Stabilization Act of 1970. PODRA requires the Department, through HG-1, to conduct proceedings under 10 CFR 205, subpart V, to accept claims for restitution, and to refund the oil overcharge moneys to persons injured by violations of the Emergency Petroleum Allocation Act or the Economic Stabilization Act. In addition, PODRA requires the Secretary of Energy (delegated to HG-1) to determine annually the amount of oil overcharge funds that will not be required for restitution to injured parties in refund proceedings and to make this excess available to state governments for use in four energy conservation programs. The determination shall be published in the Federal Register within 45 days after the beginning of each fiscal year. After the excess amount has been determined, HG-1 shall request that the CFO transfer amounts from the subsidiary accounts to the PODRA account for transfer of funds to the four designated energy conservation programs. HG-1 shall provide a list of subsidiary accounts and the excess amount for each.
- c. **Investments.** The CFO shall invest all moneys deposited into the escrow account in U.S. Government securities or deposit them in financial institutions for investment in accordance with the policies described in paragraphs 5b and 5c above. The Department participates in the Bank Deposit Financial Assistance Program by investing, through administrative financial institutions, in certificates of deposit with minority banks and minority thrift institutions. The agreement between Treasury and DOE is the basis for DOE to invest directly in U.S. Government securities. HG-1 and GC-1 shall coordinate with the CFO to ensure that authorized payments from the escrow account are matched

with maturing investments that will provide enough cash to pay the authorized disbursements. If the established maturity cycle will not provide enough cash, investments may be redeemed early.

- d. **Interest.** The CFO shall credit interest on investments to the individual subsidiary accounts established for each order based on the number of days the funds are available for investment during the investment period. This interest shall be accumulated daily.
- e. **Receivables.** To ensure sound business management practices, the CFO shall establish, collect, and close receivables for moneys due from violators or alleged violators of DOE regulations or from individuals who have received erroneous refunds. The practices described in Chapter 8, "Receivables," should be followed to the extent applicable.
- f. **Disbursements.** The Director of HG or a designee shall initiate requests for disbursements from the escrow account, ensuring that adequate internal controls provide reasonable assurance of the legitimacy of payments to claimants. The GC or a designee shall request transfers to Treasury's Miscellaneous Receipts account, subject to the settlement agreement in *In re The Department of Energy Stripper Well Exemption Litigation*. The authorized officials shall forward requests for disbursements or transfers to the CFO's designee, specifying in each request the amount, the purpose, and the consent order to which the payment is to be charged.
- g. **Reports.** The CFO shall provide a status report on the subsidiary accounts each month to GC-1 and HG-1. The report shall include the receipts, interest earned, disbursements, and escrow balance for each subsidiary account.
- h. **Federal Tracking, State Tracking, and Claimant Tracking Subsidiary Accounts.** The CFO maintains the Consent Order Tracking System, which includes state tracking, Federal tracking, and claimant tracking subsidiary accounts to provide better control and an audit trail for payments to states, miscellaneous receipts, and claimants from crude oil money held in escrow. Crude oil money is transferred from the other subsidiary accounts to these tracking accounts. The Federal tracking account also contains a reserve to provide funds for payment of liabilities that the Department may incur as a result of litigation. GC-1 shall determine the amount of funds to be held in reserve for possible liabilities.